

BEFORE THE SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

YSABEL JORDAN

Appellant,

v.

SKAGIT COUNTY, HARRY WORLEY and  
State of Washington, DEPARTMENT  
OF ECOLOGY,

Respondents.)

SHB No. 88-18

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This appeal contests Skagit County's issuance of a shoreline variance permit to Harry and Catherine Worley to allow their house to be moved to a place thirty-six feet from the Ordinary High Water Mark of Samish Bay.

The formal hearing was held in Mount Vernon, Washington on August 1, 1988. Board Members present were: Judith A. Bendor (Presiding), Harold S. Zimmerman, Nancy Burnett, Annette McGee and Mary Lou Block. Appellant Ysabel Jordan was represented by Attorney

1 Scott K. Walker of Carpenter, Walker & Hardesty. Respondent Dr. Harry  
2 Worley was represented by Attorneys John L. Hendrickson of Shidler  
3 McBroom Gates & Lucas and Warren Gilbert, Jr. A court reporter  
4 affiliated with Gene Barker & Associates recorded the proceedings.

5 At the hearing, appellant filed a hearing brief and respondent  
6 Worley (hereafter "respondent") filed Proposed Findings of Fact and  
7 Conclusions of Law. Witnesses were sworn and gave testimony.  
8 Exhibits were admitted and examined. Written closing arguments were  
9 later filed following the hearing, along with respondent's Proposed  
10 Findings. The Board Members have reviewed the entire record. From  
11 the foregoing, the Board makes these

12 FINDINGS OF FACT

13 I

14 Appellant Ysabel Jordan owns property on the shores of Samish Bay  
15 on Samish Island in Skagit County, Washington. Ms. Jordan's parents  
16 originally purchased the property in 1934. The house was built in the  
17 late 1920s, approximately 27 feet by 28 feet. It is located 25 feet  
18 from the Ordinary High Water Mark ("OHWM"). The Jordans use the house  
19 primarily from early June through September. The Jordan property is  
20 directly west of respondent Harry Worley's property. Current views  
21 from the Jordan house to the water are from the front of the house  
22 north to Samish Bay. The easterly views include Samish Bay, Mt. Baker  
23 and intervening hills and mountains. In 1987, neighbor Worley, at the  
24

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1 request of the Jordans, removed some dead cedar trees which had  
2 partially impeded the Jordan views of the water from an east window.  
3 Abutting the Worley lot to the east is a lot owned by the Dunningtons.

## 4 II

5 The existing location of the Worley residence is unique to the  
6 water front lots in this area of Samish Bay. The Worley residence is  
7 placed in the rear yard of the lot, near the gravel road which crosses  
8 the lots in this area.

9 On September 1, 1987, Harry and Catherine Worley applied to Skagit  
10 County for a variance permit to move their house, which is to become  
11 their permanent residence, to a location 36 feet from the OHWM. (A  
12 revision to the application was filed on November 16, 1987.) The  
13 Jordans sent several letters objecting to the proposed permit. Skagit  
14 County issued the variance permit on March 7, 1988, which the  
15 Department of Ecology subsequently approved.

16 The permit as approved contains the following pertinent conditions:

17 1. The relocated structure, including all decks, patios, walls  
18 and landscaping vegetation over two (2) feet in height shall be a  
19 minimum of 36 feet from the ordinary high water mark.

20 2. The applicant shall adhere to all other applicable policies  
21 and regulations of the Shoreline Master Program.

22 3. The area 36 feet northward of the relocated house shall remain  
23 free of any structures having an elevation of more than one foot above  
24

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1 the average grade unless specifically approved by agreement between  
2 Dr. Worley or his successors and the owners of Lot No. 1. [Dunningtons]

3 4. No landscape vegetation or fences over 5 feet in height shall  
4 be placed within the 50 foot setback area between the houses located  
5 on Lots 1 and 3 [Jordan house].

6 The Jordans filed a timely appeal with this Board, which became  
7 SHB No. 88-18.

### 8 III

9 The Worley lot and surrounding property is zoned residential and  
10 is designated a Rural Residential Shoreline Area under the Skagit  
11 County Shoreline Management Master Program. The area is a V4 flood  
12 zone, an area of 100 - year coastal flooding with velocity and a base  
13 flood elevation of 9 feet, mean sea level. The shoreline in the area  
14 was bulkheaded in the early 1980's, and since then has experienced  
15 considerable beach erosion. The OHWM is at the bulkhead.

### 16 IV

17 Dr. and Mrs. Worley purchased their property approximately 11  
18 years ago, in 1977. A smaller, narrower house owned by the Dunlaps  
19 had previously existed on the property. That house burned to the  
20 ground in 1952 and was not rebuilt.

21 Since acquiring the property, Worley has added onto the house on  
22 three or four separate occasions, and has also added a garage and  
23 extensive exterior decking, some of which is now removed.  
24

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The Worley house is larger and, as a result of the remodeling, substantially newer than most other residences in the area. Some of the residences on north beach are utilized on a part-time and/or summertime basis.

The cabins on the adjoining and surrounding properties have been in existence for decades. The Jordan residence, situated immediately to the west of the Worley lot, was constructed in the 1920's, and the Dunnington residence, situated immediately to the east, was constructed in 1927.

## V

The Worley property has a gradual slope, with the rear portion where the house is situated having a ground elevation of 95.7 feet. This is approximately one foot lower than the front portion of the lot, where at the proposed relocation of the house, the ground elevation is 96.7 feet. Testimony recommended raising the foundation another foot at the new location because the flood water from Samish Bay during winter storms and high tides surges over the bulkhead and flows to the lower, rear portion of the property where the house is currently located. The Worley lot is the most severely impacted by flood waters, and the house is most damaged and often repaired in relation to neighboring lots and residences.

During the past 11 years, floods have left up to two to three feet of water on the lower part or present location of the Worleys'

1 property. Flooding occurred as recently as December 14, 1987, during  
2 which the Worleys and nearby residents had standing water in their  
3 yards.

4 Typically, while it may take approximately five days for the  
5 Jordan lot to dry of flood waters, it takes the lower part or present  
6 house site on the Worley lot 10-14 days to dry. The Jordans, Worleys  
7 and Dunningtons have placed foundations of differing heights under  
8 their houses to lessen the flood damage.

#### 9 VI

10 The Dunnington residence is set back 44 feet from the OHWM. The  
11 Jordan residence is set back 25 feet from the OHWM.

12 The Dunningtons also have a guest house somewhat farther back from  
13 the water. Their houses are used primarily in the summer. A common  
14 driveway is shared with Worleys. Waterward views from the front of  
15 the Dunningtons' main house are to the north, east and west.

#### 16 VII

17 The Dunningtons have reached an agreement with the Worleys  
18 regarding the variance and proposed relocation, and are not contesting  
19 the permit.

#### 20 VIII

21 Residences constructed on the three lots to the east of the Worley  
22 lot are set back approximately 44.5 feet, 36 feet and 33 feet,  
23 respectively, from the OHWM. The adjacent residences west of the  
24

1 Worley lot are set back approximately 25 feet, 37.5 feet, 40 feet and  
2 49 feet, respectively, from the OHWM.

3 With respect to all other lots in this area, homes are located  
4 close to the OHWM, toward the front of each lot.

5 The average setback for the Jordan and Dunnington residences is  
6 34.5 feet. Setbacks from the OHWM for 6 adjoining lots in the  
7 vicinity of the Worley lot average 34.8 feet. The proposed location  
8 of the Worley residence is consistent with the average setback from  
9 the OHWM in this area and the average for the two abutting lots.

#### 10 IX

11 The Skagit County Shoreline Management Master Program requires a  
12 setback from an OHWM of 50 feet for single-family residences in the  
13 rural residential area. Therefore, the Worley application requests a  
14 variance of just 14 feet.

15 The Master Program requires at Section 7.13 that a minimum side  
16 yard setback of 8 feet be provided. The existing residence has a side  
17 yard setback of 5 feet. At the proposed location the residence will  
18 comply with the minimum side yard requirement.

19 The Worley lot is irregularly shaped in that it is significantly  
20 wider in the area nearest the OHWM than the rear portion where the  
21 residence is currently located. Therefore, the closer the residence  
22 is to the OHWM, the larger the side yard setbacks can be. A more  
23 waterward location also provides greater flexibility in accessing the  
24 new garage location since the side yards can be larger.

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X

A unique characteristic of the Worleys' present house is that it is near the west property line which is shared with the Jordan lot (lot 3). The Jordan house is less than 5 feet from the same property line. No other residence in this area is so situated. Relocating the Worley house as requested will significantly improve the Worleys' views.

XI

We find that the proposed location of the Worley residence will obstruct the view from the rear deck of the Jordan residence and partially obstruct the view from the kitchen window. The proposed location will not affect views from the front windows of the Jordan residence or from the front porch, nor will views from the front window of the east side of the Jordan residence be significantly affected. The view from the middle window will be partially impacted, but no more so than by the cedar trees that, until recently, obscured the views from that window.

We find that relocating the Worley house to the 36-foot OHWM will somewhat lessen the impact of flooding, because of the higher elevation. A higher foundation, grading, and improved drainage would result in a significant improvement from the flood hazard standpoint.

XII

Any Conclusion of Law deemed to be a Finding of Fact is hereby



1 adopted as such. From these Findings of Fact, the Shorelines Hearings  
2 Board makes these

3 CONCLUSIONS OF LAW<sup>1/</sup>

4 I

5 The Board has jurisdiction over the parties and the subject matter  
6 of this proceeding. RCW 90.58.180. Appellant Jordan bears the burden  
7 of proof. RCW 90.58.140(7).

8 II

9 We reviewed the Shoreline variance permit for consistency with the  
10 Shoreline Management Act of 1971 ("SMA", Chapter 70.58 RCW), and the  
11 Skagit County Shoreline Management Master Program ("SCSMP").  
12 RCW 90.58.140(2)(b).

13 III

14 The SCSMP requires that residential structures in rural  
15 residential shoreline areas shall be setback 50 feet from the OHWM or  
16 "the average of setbacks for existing dwelling units within side  
17 property lines . . . whichever is greater." Section 7.13 2.B(9).  
18

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19  
20  
21 1 The opinion is a "final" order for purposes of appeal pursuant to  
22 WAC 461-08-240. However, since the opinion has not garnered a  
23 four-member Shorelines Hearings Board majority, the opinion is not  
24 entitled to legal precedential effect. WEC v. Douglas County, SHB  
25 Nos. 86-34, -36, and -39 (January 12, 1988).

1           Section 10.03 of the SCSMP establishes criteria and standards for  
2 consideration of Shoreline Variance Permits. These criteria and  
3 standards are, in pertinent part, as follows:

- 4           1. Variance permits for development to be located landward of  
5 the ordinary high water mark (OHWM), except within areas  
6 designated marshes, bogs or swamps pursuant to Chapter  
7 173-32, Washington Administrative Code, may be granted  
8 provided the applicant can meet all the following criteria;  
9 the burden of proof shall be on the applicant.
- 10           a. That the strict application of the bulk dimensional  
11 or performance standards set forth in this Master  
12 Program precludes or significantly interferes with a  
13 reasonable use of the property not otherwise  
14 prohibited by this Master Program.
- 15           b. That the hardship described above is specifically  
16 related to the property and is the result of unique  
17 conditions such as irregular lot shape, size or  
18 natural features and the application of this Master  
19 Program and not, for example, from deed restrictions  
20 or the applicant's own actions.
- 21           c. That the design of the project will be compatible  
22 with other permitted activities in the area and will  
23 not cause adverse effects to adjacent properties or  
24 the shoreline environment designation.
- 25           d. That the variance authorized does not construe a  
26 grant of special privilege not enjoyed by other  
27 properties in the same area and will be the minimum  
necessary to afford relief.
- e. That the public interest will suffer no substantial  
detrimental effect.
3. In the granting of all variance permits, consideration  
shall be given to the cumulative impact of additional  
requests for like actions in the area. For example, if  
variances were to be granted to other developments in the  
area where similar circumstances exist, the total of the  
variances should also remain consistent with the policies  
of RCW 90.58.020 and this Master Program and should not

1 produce substantial adverse effects as to the shoreline  
2 environment. (emphasis added.)<sup>2/</sup>

3 IV

4 Views are a valuable component of the residential use of  
5 waterfront property. We conclude that the strict application of the  
6 bulk dimensional of performance standards set forth in the Skagit  
7 County Shoreline Management Master Program (SCSMMP) significantly  
8 interferes with such reasonable use of the Worleys' property, and that  
9 such use is not prohibited by the Master Program. Further, the  
10 potential for property damage and personal damage from flooding will  
11 continue to interfere with residential use of the lot if the variance  
12 is not granted, and the house is not moved.

13 We conclude that the hardship described above is specifically  
14 related to the property and is the result of unique conditions, i.e.,  
15 natural features of topography of the lot, flow of excess water,  
16 pre-existing development in the neighborhood, and is not due to the  
17 applicant's own actions.

18 We conclude that the design of the project will be compatible  
19 with other permitted activities in the area and will not significantly

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20  
21 <sup>2/</sup> SCSMP Section 10.01, a general paragraph on variances,  
22 contains more restrictive language than the specific  
23 criteria of 10.03, quoted above. In order to harmonize the  
24 whole, we conclude that the more detailed criteria of 10.03  
govern, including the formulation, "significantly  
interferes with a reasonable use." See ITT Rayonier v.  
Hill, 78 Wn.2d 700, 478 P.2d 729 (1970).

1 cause adverse effects to adjacent properties or the shoreline  
2 environment designation. Properly placed, with a higher foundation,  
3 the relocated residence of the applicant will be substantially in-line  
4 with the present waterward location of the adjacent houses.

5 We conclude that the variance requested will not constitute a grant  
6 of special privileges, not enjoyed by other properties in the area and  
7 will be the minimum necessary to afford relief. The immediately  
8 adjacent residences are setback distances of 44.5, 36, 33, 25, 37.5,  
9 40, and 49 feet from the OHWM. Relocation of the applicant's residence  
10 to a location 36 feet landward of the OHWM cannot be construed as a  
11 special privilege.

12 We conclude that the public interest will suffer no substantial  
13 detrimental effect from this relocation.

14 V

15 The granting of this requested variance will not result in any  
16 precedent for other properties because the Worley residence existing  
17 location is an unusual situation in this area and thus is distinguished  
18 from other similarly situated parcels. All other parcels in the  
19 vicinity are developed with structures located within the setback area  
20 of the OHWM, while the Worley residence is not. Consequently, granting  
21 this variance will merely result in the Worleys being afforded the same  
22 rights, as all of the their neighbors and will not be of precedential  
23 value for other properties in the area or beyond this area.

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VI

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law, the Board enters this

FINAL FINDINGS OF FACT  
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(13)

ORDER

The shoreline variance permit issued by Skagit county to Harry and Catherine Worley and affirmed by the Department of ecology is AFFIRMED.

SO ORDERED this 1st day of December, 1988.

SHORELINES HEARINGS BOARD

(See Dissenting Opinion)

JUDITH A. BENDOR, Presiding

  
HAROLD S. ZIMMERMAN, Member

  
NANCY BURNETT, Member

  
ANNETTE S. MCGEE, Member

(See Dissenting Opinion)

MARY LOU BLOCK, Member

FINAL FINDINGS OF FACT  
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(14)

1 BENDOR AND BLOCK  
2 DISSENTING OPINION

3 We respectfully dissent from our three colleagues' opinion.

4 In basic terms, a shoreline variance permit applicant had  
5 expanded his house to a size considerably larger than his neighbors'  
6 houses. He now plans to move it into the shoreline setback area to  
7 his neighbor's significant detriment. The Shoreline Management Act  
8 ("SMA") and Skagit County Shoreline Master Program ("SMP") variance  
9 procedures compel the denial of a variance permit under such  
10 circumstances.

11 The key issues involve the impact on the appellant neighbor's  
12 view versus respondent permittees' purported benefits regarding view,  
13 flooding, sideyard setback and garage access. We address each in turn.

14 FINDINGS OF FACT

15 I

16 Appellant neighbor Jordan's house was built on in its present  
17 location in the late 1920s. The Jordans have owned the modest 756  
18 square foot home for over 54 years, enjoying the views of the water  
19 long before the SMA and SMP were passed. Permit applicant Worley  
20 purchased his house in 1977, after the legislation was enacted. As  
21 such Mr. Worley shares with other shoreline property owners the  
22 protections and responsibilities incorporated in the SMA and  
23

1 SMP. See, Riley v. DOE, SHB No. 78-45. Subsequently, he expanded his  
2 house, and added an attached garage locating it so that access was  
3 over his eastward neighbor Dunningtons' property. His now 2,500  
4 square foot house significantly dwarfs his neighbors' homes, in  
5 particular the Jordans' home.

## 6 II

7 Worley proposes to move his house from its current location at  
8 the southern end of his property to 14 feet into the Skagit County SMP  
9 required waterward shoreline setback, a location within 36 feet of the  
10 Ordinary High Water Mark, ("OHWM"), thereby necessitating a variance  
11 permit. If respondent Worley chose to move the house only to the 50  
12 foot OHWM line, no shoreline variance from the shoreline setback would  
13 be required.<sup>1</sup>

## 14 III

### 15 View

16 At the house's current location, Mr. Worley has an unimpeded view  
17 from the front of the house north to Samish Bay. The house is  
18 currently not adjacent to other houses, so air and light from the east  
19

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20  
21 <sup>1</sup> This move will result in a permanent physical change to the land,  
22 and as such would effect future shoreline inhabitants. Therefore, the  
23 amount of time any individual may currently spend at their house does  
24 not support a variance decision. Moreover, future occupancy patterns  
25 are necessarily impossible to forecast.



1 and west are not impeded by his neighbors' dwellings. (Reference Exh.  
2 R-24, in particular.)

3 The move 14 feet into the setback places the Worley house  
4 adjacent to the Jordan house for approximately 70% of that modest  
5 house's length. (Exh. R-24) The relocated house will block the  
6 Jordan's view from two of three east-facing windows, decreasing the  
7 light and air. The impact is significant and adverse.<sup>2</sup> The modest  
8 home will be shadowed by a large house, with its' view substantially  
9 impaired. The Worleys' gain in view is at Jordan's loss, and results  
10 in a significant adverse impact.

11 IV

12 Flooding. The Worley land has a very slight slope. The move  
13 proposed would provide at most one foot of elevation gain from ground  
14 elevation 95.7 feet to 96.7 feet (as measured in the center of the  
15 house).

16 The nearby property and the Worley property are all within a  
17 100-Year floodplain and all are subject to flooding. Flood waters  
18 drain and seep slowly from these properties. As recently as 1987 the  
19

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20 2 The former cedar trees referred to by our colleagues only  
21 partially impeded the view from the front window, leaving a filtered  
22 view through branches (see Exh. R-2). Worley chose to remove the dead  
23 trees for reasons not disclosed on the record. Regardless, the trees  
24 are not there now. Any implicit argument (see our colleagues' F of F  
25 XI) that the view impact due to the house move is somehow less severe  
26 because of the previously existing trees, is not an approach supported  
27 by the facts or the law.

1 houses were flooded, with standing water in the yards.<sup>3</sup>

2 The gain of at most one foot elevation by the move into the SMP  
3 shoreline setback area does not remove the house from the floodplain,  
4 nor alter the reality that respondent Worley would still have to  
5 undertake further significant flood mitigation measures. Moving to  
6 the 50 foot OHWM setback would provide some flood relief and not  
7 require a variance.

8 V

9 Side Setback

10 The Worley western sideyard distance to be gained by intruding  
11 into the waterward setback would not significantly differ than if the  
12 house were moved to the 50 foot OHWM line. If gaining sideyard  
13 setback were a key goal, it could be otherwise obtained in a way which  
14 minimizes adverse impacts to the Jordan residence. Worley's own  
15 efforts, the expansion of the house on this narrow lot, has created  
16 this situation. The purported sideyard setback benefits gained by  
17 this move are largely illusory; the remedy chosen is not the  
18 minimum necessary, and is one significantly detrimental to his  
19 neighbor.

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21  
22 <sup>3</sup> There is insufficient evidence in the record to support our  
23 colleague's findings, at V, that the Worley lot is more severely  
24 impacted by flood waters.

1     Garage

2             The Worley garage situation is an applicant-created hardship.  
3     Moreover, relief which is less harmful to the neighbor is obtainable,  
4     by relocation, realignment of the garage, and so forth.

5                             VI

6             Any Conclusion of Law deemed to be a Finding of Fact is hereby  
7     adopted as such. From these Findings of Fact, the Board makes these

8                             CONCLUSIONS OF LAW

9                                     I

10            The Skagit County Shoreline Management Master Program requires  
11   that single family residences in rural residential shoreline  
12   environments be set back 50 feet from the OHWM or "the average of  
13   setbacks for existing dwelling units within 300 feet of side property  
14   lines . . . , whichever is greater." Section 7.13 2.B(9); Emphasis  
15   added. A shoreline variance is required to place a house closer to  
16   the water. One key reason for the requirement is clear: residents'  
17   enjoyment of waterward views. Issuance of this permit would directly  
18   thwart this goal.

19                                     II

20            For a variance permit, the SMP requires at Section 10.03 that it  
21   be demonstrated that strict application of the bulk dimensional  
22   standards significantly interferes with a reasonable use of property.  
23   We conclude as a matter of law that Mr. Worley currently has a

1 reasonable use of his property. Appellant Worley's current less  
2 advantageous view does not, per se, significantly interfere with a  
3 reasonable use. Non-compliance with WAC 173-14-150(2)(a) has been  
4 demonstrated by appellant. Riley v. DOE, SHB No. 78-45.

### 5 III

6 We further conclude that the variance permit would cause  
7 significantly adverse impacts to the adjacent Jordan property by  
8 blocking the waterward view. This violates the SMP 10.03(1)(c) and  
9 WAC 173-14-150(2)(c). The importance of preserving shoreward views  
10 is well recognized. Mohr v. King, SHB No. 82-28.

### 11 IV

12 It has been proven that to improve Worley's use anywhere on the  
13 property requires flood improvements. We conclude that appellant has  
14 demonstrated that strict application of the 50 foot OHWM setback does  
15 not impose an "unnecessary hardship" on respondent Worley. WAC  
16 173-14-150.

17 We conclude that the move to 14 feet into the shoreline setback  
18 is not the minimum necessary to afford relief. Therefore the permit  
19 violates the variance requirements, SMP 10.03(1)(d) and WAC  
20 173-14-150(2)(d).

### 21 V

22 We conclude that granting this variance when applicant created a  
23 substantial portion of this hardship violates the SMP, 10.03(1)(b) and  
24 WAC 173-14-150(2)(b).

VI

In sum, the variance permit as issued violates numerous provisions of the Skagit County SMP and the State SMA regulations. Only one violation need be demonstrated to merit reversal. We conclude that the grounds for reversal have been demonstrated.

VII

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. From these Conclusions of Law we determine that the variance permit should be DENIED.

  
JUDITH A. BENDOR, Member

  
MARY LOU BLOCK, Member